

**The Inspector Credentials Authorization Procedures
Facility Inspection Schemes
Attachment 4**

Draft

June 18, 1999

I. Background on Facility Inspection Schemes¹

A. Reasons for Inspections: Facility Inspection Schemes

1. As part of its mission, EPA inspectors and tribal, state, or territorial inspectors acting on EPA's behalf (inspectors) conduct on-site inspections for the purpose of determining a facility's compliance with regulations associated with federal environmental legislation. However, since no program has the virtually limitless resources that would be required to inspect all facilities subject to these regulations, programs develop strategies allocating inspections to various segments of the regulated community.
 - a. Essentially, there are four categories of inspections:
 - (1) Routine. Routine inspections are conducted at facilities that are members of a class or segment of the regulated universe targeted under a neutral administrative inspection scheme (see discussion below). The agency has no indication that the facility is in violation in advance of a routine inspection; the inspections are conducted to determine compliance with all (or a priority portion) of a statute's requirements.
 - (2) For Cause. If a facility is selected to be inspected "for cause" there is some reason to suspect that a violation exists or existed based upon a tip, a complaint, source self-monitoring report, or other information, or a referral from another agency. Under these circumstances, EPA may perform an inspection to confirm noncompliance. An emergency may also evoke a "for cause" inspection if the situation may cause harm in the absence of immediate remedial action. The principal distinctions between "for cause" and routine inspection is that in "for cause" inspections, the inspector will have reason to believe in advance that a violation may exist.
 - (3) Case development support. Sometimes evidence in addition to that collected on an initial inspection is needed for continued case development and/or to support pending enforcement actions. On such inspections, inspectors

¹For the purposes of the ICAPs, the term "facility" includes, but is not limited to, sites, areas, and farms.

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collect evidence in accord with the requirements specified by the case development or litigation team.

- (4) Follow-up. Follow-up inspections are performed to determine whether a facility is in compliance with the requirements of existing consent decrees or administrative orders. Follow-up inspections are also performed based upon program-specific standards. Such inspections help to ensure the integrity of the enforcement program; if the facility is still found to be out of compliance, EPA will usually step up to a stronger enforcement action. Follow-up inspections may vary by federal environmental program.

B. Overall Inspection Schemes

1. Each tribal, state, or territorial media program should use an overall inspection scheme that allocates a proportion of inspections, where appropriate, to the routine, for cause, case development support, and follow-up category.
2. Allocation of inspections should be based upon the identified enforcement priorities of a media-specific program implemented by either EPA or the tribe, state, or territory.²
 - a. Of course, each media-specific program will have a somewhat different approach to establishing goals and priorities. However, three factors are central to determining the thrust of compliance and enforcement efforts:
 - (1) The likelihood that a violation in a class or segment of sources has or will present a significant risk to human health and the environment;
 - (2) The likelihood that a class or segment of sources has or will violate environmental laws or regulations; and
 - (3) The likelihood that inspections of a class or segment of sources will contribute to a credible enforcement presence by EPA or a tribe, state, or territory.
 - b. In a high-priority class, every member might be inspected. In lower-priority classes, only a small percentage sample, if any, may be inspected.

²EPA's allocation is also based upon a program's Operating Year Guidance and Annual Implementation Plan documents. These are also stated in an annual summary of enforcement priorities published by the Office of Enforcement and Compliance Assurance.

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3. Each EPA program has developed a “neutral” administrative inspection scheme setting out how the regulated community is divided into classes or segments for routine and follow-up inspection targeting purposes. Typical criteria for these segments include the following:
 - a. Type of industry;
 - b. Size of facility;
 - c. Location;
 - d. Amount and type of chemicals or other regulated materials handled;
 - e. Geography (both from a risk standpoint and efficient use of inspection standpoint);
 - f. Compliance with new federal environmental regulations;
 - g. History of non-compliance (e.g. length and frequency of non-compliance with federal environmental regulations);
 - h. Tip or complaint;
 - i. Potential risk to human health or the environment; and
 - j. Environmental justice.
- C. Non-Biased Selection
 1. Although under the neutral scheme classes or segments of the regulated community will be targeted for inspection, the specific sites within each class or segment must be selected in a non-biased way for inspection. If there is reason to believe that a specific facility is, or was, in violation, then a for-cause inspection will be conducted. Consistent with the findings of the Supreme Court’s decision in Marshall v. Barlow’s Inc., 436 U.S. 307 (1978), other sites to be inspected must be selected based on a non-biased general administrative plan. Note that actual inspection scheduling may also take into account other factors such as geographic and seasonal considerations.

II. Development of Facility Administrative Inspection Schemes for the ICAPs

The following requirements are applicable to each tribe, state, or territory whose inspectors become authorized to obtain a federal inspector credential to conduct inspections on behalf of EPA pursuant to the Inspector Credentials Acknowledgment Procedures (ICAPs).

1. Allocation of Inspections
 - a. Each tribe, state, and territory should allocate a proportion of inspections, on a media-specific basis, as either routine, for cause, case development support, or follow-up based upon identified, media-specific enforcement

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- priorities of EPA, the tribe, state, or territory. Allocation of inspections is accomplished through the use of media-specific inspection schemes (inspection schemes).
2. Each tribe, state, or territory should develop or should have in place inspection schemes that target some members of a regulated community for inspections:
 - a. On a random basis;
 - b. Within a definite time frame; or
 - c. On the basis of a neutral, objective inspection strategy.
 3. Use of EPA Inspection Schemes
 - a. In lieu of developing new media-specific inspection schemes, each tribe, state, or territory can use, where available and applicable, current EPA inspection schemes:
 - i. Developed under the auspices of EPA memorandum of understanding, grants, cooperative agreements, or other EPA-tribal, EPA-state, or EPA-territorial programs; or
 - ii. Developed by EPA.
 - b. EPA should assist a tribe, state, or territory in developing new inspection schemes if an existing one as described in section 3 above does not suffice.
 4. Approval of EPA Inspection Schemes
 - a. Each tribe, state, or territory should submit new or existing inspection scheme(s) to EPA for approval unless they have already been reviewed pursuant to existing memoranda of understanding, grants, cooperative agreements, or other EPA-tribal, EPA-state, or EPA-territorial programs.
 - b. When appropriate, EPA should approve the new or existing inspection scheme(s) or submit comments and proposed changes to the tribe, state, or territory.
 - c. Each tribe, state, or territory should review and revise the inspection scheme(s) in a manner consistent with the comments or changes submitted by EPA and re-submit the document(s) to EPA.
 - i. Each tribe, state, or territory should provide the revised inspection scheme(s) to EPA for review and approval.
 - d. EPA should review and, when appropriate, approve each tribe, state, or territory's inspection scheme.
 - i. As necessary, EPA should provide comments on or request changes to an inspection scheme before approval occurs.
 - ii. Where no comments are provided or changes requested, EPA should make a decision on whether to approve an inspection scheme within sixty days of receipt by the EPA Regional point of contact (POC) unless an alternative time frame is agreed upon with

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- the appropriate point of contact from the tribe, state, or territory.
 - iii. Where comments or changes are requested and appropriate revisions are made, EPA should make a decision on whether to approve an inspection scheme within sixty days of receipt by the EPA Regional POC of an revised inspection scheme unless an alternative time frame is agreed upon by the appropriate point of contact from the tribe, state, or territory.
 - iv. Within fifteen days of deciding whether to approve or disapprove an inspection scheme, EPA should to notify the tribe, state, or territory of the decision.
- 5. Updating and Revising Inspection Schemes
 - a. Each affected tribe, state, or territory should revise and update their inspection scheme(s) or use updated EPA-developed inspection scheme(s) as necessary to ensure that it accurately reflects the current inspection priorities and criteria.